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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1064

ROBERT M. WENDLINGER,
Petitioner,

vs.

HARDWARE MUTUAL CASUALTY COMPANY,
A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETER Q. NYCE,
THOMAS A. WILLIAMS,
L. C. O'CONNOR,
JOHN W. FUBSELL,
Counsel for Petitioner.



INDEX

	Page
Petition for writ of certiorari	1
A. Jurisdiction	1
B. Statement of the matter involved	2
C. Question presented	4
D. Reasons relied on for allowance of writ	4
Brief in support of petition	7
I. Opinions of the courts below	7
II. Jurisdiction	7
III. Statement of the case	8
IV. Question presented	8
V. Argument	8
Policy misconstrued	8
Pleasure purposes	10
Partnership not dissolved	12
No territorial limitations	12
VI. Conclusion	13

Table of Cases Cited

Aschenbrenner v. *U. S. F. & G. Co.*, 292 U. S. 80	8
Culver v. *T. B. Webb, etc.*, 12 N. W. (2nd) 731 (Wisconsin)	9
Georgia Casualty Company v. *Waldman*, 53 Federal (2nd) 24	11
Midwest Dairy Corp. v. *Ohio Ins. Co.*, 356 Ill. 389	8
Newton v. *Employers Liability Insurance Corp.*, 107 Fed. (2nd), 164	11

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Robert M. Wendlinger, respectfully petitions that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered in this case on the 26th day of December, 1944.

A

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on the 26th day of December, 1944 (R. 63). The

jurisdiction of this Court is invoked under Section 240-A of the Judicial Code as amended by the Act of February 13, 1925; 28 U. S. C. A., Section 347(a).

B

Statement of the Matter Involved

Robert M. Wendlinger, the petitioner, recovered a judgment for $4500.00 against Mildred Barbee, in the Hustings Court, Part II of the City of Richmond, for injuries sustained in an automobile accident, which occurred in the City of Richmond on October 21, 1942 (R. 10). The Hardware Mutual Casualty Company, a corporation of the State of Wisconsin, had issued, in that state, and in force a policy of insurance covering the automobile which injured the petitioner (R. 11-14D). This policy denominated an "Automobile garage liability policy", was delivered to J. W. Ramsey and Duncan Barbee, d/b/a, Ramsey and Barbee address, North 5th Street, Auburn, Sangamon County, Illinois, the location of the insured premises being the same. Ramsey and Barbee, the insured, were partners conducting a garage business at the time the policy in question was issued. Attached to the policy was an "additional interests endorsement" for which a separate premium was paid as shown thereon. Subsequently, while the policy was in force, Barbee and Ramsey agreed that Ramsey continue to conduct the business of the partnership at that location, and that Barbee would seek employment elsewhere temporarily. Under this arrangement, Barbee was to draw no salary from the business, but would share in any net profits accruing to the partnership, after payment of a salary to Ramsey, and payment of operating expenses, thus retaining his status as a partner (R. 31).

Pursuant to this agreement, Barbee took one of the automobiles owned by the partnership, and drove it to Virginia,

where he procured employment as a civilian mechanic instructor at Camp Lee, Virginia.

He leased an apartment in Richmond, Virgina and lived there with his wife for a period of about 6 months, after which time he returned to Auburn, Illinois, and resumed his active participation in the partnership.

While Barbee was employed at Camp Lee, he used this automobile to travel back and forth between Richmond and Camp Lee, and both he and his wife used the automobile, generally for pleasure purposes.

On the night of October 31, 1942, Mrs. Barbee, while operating the automobile, with the consent of the named assured, Barbee and Ramsey, en route with her household laundry to the apartment she and Barbee were occupying, ran down and injured the petitioner.

Upon trial of the action instituted by the petitioner in the District Court of the United States for the Eastern District of Virginia against Hardware Mutual Casualty Company, the District Judge directed a verdict in favor of the petitioner. On appeal, the Circuit Court of Appeals, for the fourth Circuit reversed the District Court and directed judgment for the Hardware Mutual Casualty Company. The Circuit Court thereby refusing to give effect to the insuring agreement which was "to pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, * * * because of bodily injury, sustained by any person or persons caused by accident and arising out of such of the operations hereinafter defined, * * *."

These operations covered by the policy were defined as follows:

Div. 1—*Automobile dealer or repair shop*, the ownership, maintenance, occupation or use of the premises herein designated including the public ways immediately adjoining,

for the purpose of an automobile dealer or repair shop, and all operations either on the premises or elsewhere, which are necessary and incidental thereto, including repairs of automobiles, or their parts and ordinary repairs of buildings on the premises and the mechanical equipment thereof and the ownership, maintenance or use of any automobile for any purpose in connection with the above defined operations, and *also for pleasure use*. (Italics *ours*) The policy further provided that its provisions covered any one operating the automobile with the consent of either of the named insured.

C

Question Presented

Whether or not the clause contained in the policy "*and also for pleasure use*" and the clause contained in the additional interests endorsement "for pleasure purposes", mean pleasure purposes as generally understood, or the narrow and restricted interpetation, placed thereon by the Circuit Court of Appeals.

D

Reasons Relied On for Allowance of Writ

1. The United States Circuit Court of Appeals for the fourth Circuit has decided an important question of law, which has not been, but should be settled by this Court and has decided the same in a way in conflict with applicable decisions of this and other Courts and has construed coverage of a policy of automobile liability insurance rigidly in favor of the insurer, rather than liberally in favor of coverage of the insured, contrary to all leading authorities on the question.

2. The question presented here is of general interest as thousands of these and similar liability policies of insur-

ance are in effect throughout the country. A supporting brief accompanies this petition.

Wherefore your petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, for the fourth Circuit entered by that court on the 26th day of December, 1944, and said judgment reversed by this Honorable Court, and that your petitioner may have such other and further relief as this Honorable Court may deem proper.

PETER Q. NYCE,
THOMAS A. WILLIAMS,
L. C. O'CONNOR,
JOHN W. FUSSELL,
Counsel for Petitioner.